



2024 INSC 1031

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 14772 OF 2024
(@ SLP (C) No. 4442 OF 2024)

DIRECTOR GENERAL & ORS.

...APPELLANTS(S)

Versus

BALAN C. & ANR.

...RESPONDENTS(S)

O R D E R

1. Leave granted.
2. The Director General for Centre for Development of Advanced Computing is in appeal against the order dated 14.12.2023 passed by the High Court of Kerala in O.P. (CAT). No. 90/2023, whereby the order transferring the services of the respondent from Thiruvananthapuram to Jammu was set aside.
3. The relevant facts are as follows. The respondent was appointed as a Scientist/Engineer in the Centre for Development of Advanced Computing, hereinafter referred to as the Centre, which is an autonomous scientific society under the Department of Electronics and Information Technology, Ministry of Communications and Information Technology, Government of India. Since his appointment in 1999, the respondent has been posted in Thiruvananthapuram, Kerala. In 2020, he was made the project manager for C-DAC's-State Data Centre in

Jammu which required him to be physically present at the project site. However, considering the respondent's request that his minor son is a special child and requires his personal attention, officers junior to the respondent were transferred and the respondent was allowed to work for the Jammu project from Thiruvananthapuram itself.

4. However, as the work progressed, the Centre felt the compelling need of respondent's personal presence at Jammu, and issued a transfer order dated 27.04.2023 under clauses 14.5 and 14.6 of its Bye Laws. The respondent made a representation to the concerned authority stating that his 14-year-old son suffers from 65% locomotor disability and as a primary caregiver his presence at Thiruvananthapuram is absolutely necessary. He relied on the O.M. No. 42011/3/2014-Estt. (Res) dated 08.10.2018 issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India, on the subject of *Exemption from the routine exercise of transfer / rotational transfer*. He claimed that the said notification exempts a government employee from routine transfer if he is the main caregiver of a person with disability.

5. The representation was rejected on 09.05.2023. Questioning the rejection, the respondent approached the Central Administrative Tribunal ('CAT') by filing OA No. 180/00213/2023. The Tribunal dismissed the said OA on 03.07.2023. Thereafter, the respondent filed

the present O.P. (CAT). No. 90 of 2023 before the High Court under Article 227 of the Constitution of India, which led to the order impugned before us.

6. Initially, pending disposal of the writ petition, by way of an interim order dated 11.09.2023, the High Court directed the respondent to comply with the transfer order. This was evaded by the respondent by utilizing medical and earned leaves that he had. Be that as it may, finally, the High Court, by the order impugned before us set aside the order of transfer dated 27.04.2023 and proceeded to direct the appellant to consider the issue of transfer afresh *in light of the law enunciated above*.

7. The 'law enunciated', that the High Court was referring to, is reference to certain provisions of the UN Convention on the Rights of Persons with Disabilities, the UN Convention on the Rights of the Child and the provisions of the Rights of Persons with Disabilities Act, 2016.

8. Mr. K.M. Nataraj, Ld. ASG, has not joined issue on the general legal issues referred to in the order of the High Court but has submitted that the appellant had in fact made positive contribution to the working of the Centre. Considering the fact that the respondent had a special child, the Centre used to accommodate him from the very beginning. This, he submits, is evident from the fact that the respondent continued uninterruptedly for more than 20 years at the same place,

Thiruvananthapuram. He submitted that it is only under compelling circumstances that the transfer was passed and this is evident from the letter dated 09.05.2023, the relevant portion of which is as follows:

“[...]

2. You are one of the senior most scientists at the rank of Scientist “G” and an officer at Pay matrix Level 14 and you are the Head of Jammu Project. You are the only senior most person who is aware of the exact progress of the work and also competent to appraise the Jammu Govt Authorities for release of payment.

3. Your transfer to Jammu is not a routine or rotational one, this is purely center specific and need based one, so the OM attached along with your email representation is not banning CDAC to pursue their project requirements by posting an employee to a different location.”

9. During the pendency of the proceedings before the High Court, the appellant was asked to reconsider the transfer and having reconsidered its own decision, the Centre communicated the outcome to the respondent in the following terms:

“ [...]

As your son has grown up, you have visited foreign countries as part of training program and stayed away from home for more than two weeks. You have also availed LTC and travels frequently for official as well as personal purposes.

As you know, C-DAC, Trivandrum has taken up the project worth Rs.12466 lakhs under your leadership, for modernizing the SDC of J&K State Government for the procurement, implementation, up gradation of existing data centre, training of the Government officials and management of web servers of different Government departments in June 2020. The project also includes Operation & Maintenance of the Data Centre for a period of 10 years; ie up to.2030.

[...]

You may also note that your wife (mother of the disabled child) is also working at C-DAC, and she is stationed at Trivandrum itself. In case of your official emergencies, I believe that she can also act as the care giver.

Since this being the circumstances, the undersigned strongly believe that transfer order is issued in the larger interest of the Organization as well as in public interest, which far outweighs the personal reasons projected by you. Once the situation is under control and your constant physical presence is not at all necessary at SDC J&K to manage its affairs, you are free to make a representation to the undersigned for getting transferred to C-DAC, Trivandrum campus. The undersigned will consider it favorably at that point of time.

I expect that, you will understand the situation and deliver your duties and responsibilities vested upon you and help the organization to tide out the present crisis at SDC J&K.”

10. Apart from the legal contention, it is evident that the Centre always recognized and respected the services of the respondent but requested the respondent to serve at the Jammu office, not as a routine transfer, but for special reasons.

11. Ms. Indira Jaising, Ld. Senior Counsel appearing on behalf of the respondent, has also not referred to the national and international laws cited by the High Court, but has made a very balanced and a reasonable submission that the respondent understands the incidents of service under an organization and is in fact willing to abide by the transfer order. She has however expressed concern about the salary which has not been paid to him from 27.05.2023.

12. Having considered the matter in detail and in view of the fact that the respondent has expressed his willingness to join the post to which he has been transferred, the only issue that subsists is the salary for the period during which the present litigation commenced and continued.

13. Taking note of the facts and circumstances of the case, we are of the opinion that the appellant should release the salary for the period commencing from 27.05.2023 within a period of one month of his joining the transferred post. It is the responsibility of the appellant and the respondent to ensure that no further litigation would ensue on the basis of the salary payable. The appellant also will extend the same care and courtesy that is indicated in the letter dated 01.12.2023 addressed to the respondent.

14. With these observations, we allow the appeal in part, set aside the impugned order and restore the transfer order, subject to the directions as indicated in the above paragraph.

.....**J.**
[PAMIDIGHANTAM SRI NARASIMHA]

.....**J.**
[MANOJ MISRA]

NEW DELHI;
DECEMBER 20, 2024